Equality and Human Rights Commission

Minutes of the 97th meeting of the Board of the EHRC

15 September 2021 (10:45-18:00)
Church House, Westminster, London

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Attending

Commissioners

Baroness Kishwer Falkner (Chairwoman); Caroline Waters via VC (Deputy Chair); Suzanne Baxter; Jessica Butcher; Pavita Cooper; David Goodhart; Susan Johnson; Helen Mahy; Alasdair Henderson (joined at 1pm), Mark McLane, Lord Bernard Ribeiro; Dr Lesley Sawers via VC and Su-Mei Thompson.

Officers

Ben Coates, Senior Principal - Planning, Performance and Governance
Cath Denholm, Joint Acting Chief Executive
Melanie Field, Joint Acting Chief Executive
Carla Garnelas, Senior Principal – Strategy Hub (item 10)
Callum MacInnes, Principal – Planning, Performance and Governance
Bill Malloy, Director – Finance, Procurement, Planning, Performance and Governance
Luke Taylor, Director – Evidence and Strategy
Sarah Whelan, Senior Associate – Planning, Performance and Governance

Guests

Martyn Jones, Interim Chair - EHRC Wales Committee
Charles Ramsden – Government Equalities Office (GEO)

Observer

Marcial Boo, Incoming Chief Executive

Minutes

1. Chairwoman's introduction

1.1 The Chairwoman welcomed attendees. Martyn Jones continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner. Cath Denholm and Melanie Field attended as Joint Acting Chief Executives. Marcial Boo observed the meeting and will join the Commission on 20 September as Chief Executive.

2. Apologies for absence

2.1 No apologies were received.

3. Declarations of interest

3.1 The Chairwoman updated the Board on a potential conflict of interest, should it come to pass, she will formally declare it in the normal manner.

3.2 No other declarations were made additional to those already registered.

4. Minutes and correspondence

4.1 Suzanne Baxter requested that 97.01 point 8.4 be amended to include that she had stepped down as an ARAC member in June 2021. **Action: Sarah Whelan to amend minutes.**

4.2 Subject to the amendment above, the Board approved the minutes of the 07 July, 96th Board meeting (EHRC 97.01) and 08 July, minutes of the Board workshop discussion (EHRC 97.02) as accurate records of the respective meetings.

4.3 The Chairwoman advised that she will be voting independently on the issue of assisted dying when it is brought to the House of Lords.

4.4 Commissioners queried whether they could receive the Commission's press summaries on a regular basis. **ACTION: Cath Denholm to explore options further with the communications team before making recommendations to the Chairwoman on the most appropriate and cost effective method. Once a process is agreed it will be reviewed in 6 months' time to determine how helpful / effective it is.**

4.5 The Chairwoman reminded Commissioners of the following correspondence shared with them since the previous Board meeting on 07 & 08 July:

4.5.1 the information paper sent to them on 20 July on the Commission's policy position on assisted dying;

4.5.2 the slides shared with them on 20 July ahead of the impartiality training session. She advised that a follow up session was being organised to accommodate those who could not attend previously;
4.5.3 the updated terms of reference for the Commissioner Working Group for Is Britain Fairer circulated on 21 July; and
4.5.4 an update on the Commission's engagement with the Department of Health and Social Care on the detention of people with learning disabilities or autism, shared on 03 September.

5. Actions arising

5.1 Commissioners queried 97.03 point 92/5.2, regarding Commissioner attendance at Wales and Scotland Committee meetings, specifically whether or not the current process in place was working adequately. The Scotland Commissioner advised that the process was working and that, where possible, it was better for a Commissioner to join when they have a specific interest in the items being discussed. The Interim Chair of the Commission's Wales Committee advised that there had been little engagement between the Committees and the Board recently and that he would be keen for further opportunities for this to take place. **Action: Graham Wheaton to meet with Scotland and Wales Committee Secretaries to further discuss options.**

5.2 The Board were content with all other actions as listed (EHRC 97.03) and agreed that those listed as 'proposed for closure' could be closed and that all others were progressing satisfactorily.

6. Chief Executive's strategic report

6.1 Prior to the meeting the Board considered the Chief Executive's report (EHRC 97.04).

6.2 Commissioners requested an update on the enforcement of the Gender Pay Gap regulations. Commissioners raised concerns that the level of non-compliance may be higher this year, due to the pausing of enforcement activity during the pandemic, and that reporting will be more complex for some employers due to the furlough scheme that could lead to errors in their reporting. Commissioners requested that the Commission provides clarity to employers as soon as possible, encourages reporting during the period that enforcement activity was paused and ensures there is enough resource in the team leading on this activity. **Action: Sarah Whelan to share Board's comments with the Gender Pay Gap team. There will be an update via the CEO report at the October Board meeting.**

6.3 Commissioners queried why the Commission needed an external provider to analyse the responses to the Strategic Plan consultation; asked how disability will remain a priority within the Plan given the forthcoming dissolution of the Disability Advisory Committee, and asked how many responses had been received so far for the consultation. The Executive advised that the option of analysing the responses internally had been considered but, given the

resource required, the use of an external provider had proved the better option. It was noted that around 500 responses have been received to date, and that disability would remain a key area of focus for the plan.

6.4 Commissioners asked for assurance that there had been a robust legal stress test carried out with Counsel in relation to the judicial review of the Labour Party investigation. **Action: Melanie Field to review process with the Legal team provide the Board with an update.**

6.5 The Scotland Commissioner requested that the Commission's policy on conversion therapy (referring to any form of treatment or psychotherapy which aims to change a person's sexual orientation or to suppress a person's gender identity) includes a Scottish perspective, as the Scotland team would be providing evidence on this at the Scottish Parliament next week (w/c 20 September). The Chairwoman agreed but noted that there needed to be a Great Britain approach overall and this is being captured in the briefing.

6.6 The Interim Chair of the Commission's Wales Committee advised that the Wales Committee had concerns about lack of data with regards to the race inquiry in the social care sector. The Chairwoman agreed that the disaggregated nature of social care makes collection of data very difficult.

6.7 Commissioners also discussed corporate issues, including: the transformation plan; the direction of travel on race and trans rights issues; the re-opening of offices and future ways of working. Commissioners all agreed that, as there is clear legislation on race discrimination, the Commission needed to push forward on enforcement in this area. They also noted the importance of the Commission setting out clearly why it was working on certain areas and not others.

7. National Human Rights Institution (NHRI) Accreditation

7.1 Prior to the meeting the Board considered the relevant papers (EHRC 97.05, and annexes 97.05a; 97.05b and 97.05c) The Board agreed to expand the remit of the existing Commissioner Working Group (CWG) on Human Rights Monitoring (HRM) and Related Matters to explicitly include reaccreditation; with Wales and Scotland representation. **Action: Sarah Whelan to amend the CWG terms of reference. Once amended and agreed by the CWG these will be sent to the Board for approval. Action: CWG HRM Chair to work with Scotland and Wales representatives to ensure appropriate representation.**

7.2 Commissioners discussed: links with the Spending Review settlement; the importance of evidencing the Paris Principles, whilst managing the politics surrounding this; the need to be clear about the implications of losing 'A' status i.e. to the UN, to the UK government; and the need to factor in any additional staff resource needed. The Interim Chair of the Commission's Wales Committee advised that he would raise this issue with Jane Hutt, Minster for Social Justice, Welsh Government when he meets with her.

8. Update on the Spending Review

8.1 The Board considered the Commission's submission to the Cabinet Office in respect of the forthcoming Spending Review (EHRC 97.06a and 97.06b).

8.2 Commissioners discussed: the language used in the document; whether or not an assumption could be made that an inflationary uplift would be made; the Commission's current level of projected spend against budget and whether this will be factored into the baseline and whether the costs of live legal cases are being tracked. It was agreed that:

8.2.1 the recommendations on the underspend are brought to ARAC at their meeting on 07 October and the Governance Board meeting on 20 October. **Action: Bill Malloy to take paper to ARAC and Board**; and

8.2.2 tracking costs of legal cases to form part of the performance report. **Action: Adam Sowerbutts to work with legal team to ensure legal costs are captured in the performance report.**

9. Is Britain Fairer: publication timeline

9.1 Prior to the meeting the Board had considered the relevant papers (EHRC 97.07 and annexes 97.07a and 97.07b). The Board agreed the recommendation to delay publication of Is Britain Fairer (IBF); Is Wales Fairer (IWF) and Is Scotland Fairer (ISF) until October 2023.

9.2 Commissioners discussed the other options - to publish in April 2023 and / or to publish in April 2023 with an additional module covering the labour market statistics in October 2023. However, they determined publishing in its entirety in October 2023 would have the benefit of a single publication on a statutory footing, whilst maximising influencing potential and impact through the use of quality, timely data regarding the impact of the pandemic. They did note, however, the timing of election manifestos and equality objective setting in Wales and that the limited access to government data needs further consideration.

9.3 The Chair of the Commissioner Working Group (CWG) on IBF advised that although IWF and ISF have previously had an impact with external stakeholders in their nations, IBF had a weaker impact. In addition, the 2018 report was more impactful with academics and civil society than with the UK Government. The next publication will have a particular theme i.e. the pandemic and discussions with the CWG are ongoing about the possibility of changing the title; of linking data to recommendations and to the ways its profile can be raised.

10. Workshops

10.1 Prior to the meeting the Board had considered the relevant papers (EHRC 97.08; 97.08a; 97.08b; 97.08c and 97.08d).

10.2 Commissioners attended workshops which considered the implementation of the Strategic Plan 2022-25. The purpose of the workshops were to reflect on the role and remit of the Commission; lessons learnt from the current Strategic Plan and articulate how the Commission can use its powers to best achieve impact on the areas of the focus in the next Strategic Plan. Commissioners considered and tested the design principles which underpin the Commission's approach to business planning and delivery and the balance between planned / responsive work and reactive work.

11. Any other business

11.1 The Executive advised Commissioners that Mermaids (LGBTQ+ charity) had written to the Commission expressing concern about its decision not to publish guidance for schools on Equality Act obligations relating to trans pupils. **Action: Melanie Field to update the Board at the October Board meeting.**

11.2 The Board agreed that the Commission should provide guidance for service providers on the single sex services exceptions. **Action: Melanie Field to update the Board at the November Board meeting.**

11.3 With no other business being raised, the Chairwoman thanked Board members and staff for their contributions, and drew the formal meeting to a close. The Board would next meet on 20 October for a virtual Board meeting.